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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, MARCH 18, 2003

IN THE MATTER OF

Receiving comments on a draft
memorandum of agreement between the
State Water Control Board and the
State Corporation Commission

CASE NO. PUE-2003-00114

ORDER INVITING COMMENTS

Section 62.1-44.15:5 D 2 of the Code of Virginia requires the State Water Control Board ("Board") and the State Corporation Commission ("Commission") to "develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 to ensure that consultation on wetland impacts occurs prior to siting determinations" by the Commission. The Department of Environmental Quality ("Department"), acting on behalf of the Board, and the Commission have developed a draft memorandum of agreement that is affixed to this Order as Attachment A.

The Department and the Commission seek the benefit of comments from interested persons on this matter. Accordingly, the Department and the Commission hereby invite interested persons to submit comments on the draft memorandum of agreement pursuant to the procedures set forth in this Order. The Department and the Commission will consider such comments and enter into a final memorandum of agreement.

This is not a formal proceeding that is regulatory, adjudicatory, or other, as defined by 5 VAC 5-20-80, -90, or -100. There will be no final order issued in this case, nor will there be any final finding, decision settling the substantive law, order, or judgment within the meaning of § 12.1-39 of the

Code of Virginia. No general order, rule, or regulation is being promulgated in this case. This Order and Attachment A shall be forwarded for publication in the Virginia Register of Regulations.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Case No. PUE-2003-00114 is established to permit interested persons or entities to submit comments on a draft memorandum of agreement, affixed hereto as Attachment A, between the Department of Environmental Quality, acting on behalf of the State Water Control Board, and the State Corporation Commission.

(2) The Commission's Division of Information Resources shall forthwith cause this Order and Attachment A to be forwarded for publication in the Virginia Register of Regulations.

(3) On or before May 7, 2003, any interested persons desiring to submit comments in writing on Attachment A to this Order shall submit such comments to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Such written comments shall refer to Case No. PUE-2003-00114.

(4) On or before May 7, 2003, any interested persons desiring to submit comments electronically on Attachment A to this Order shall do so by following the instructions available at the Commission's website: <http://www.state.va.us/scc/caseinfo/notice.htm>.

(5) This matter is now continued.

MEMORANDUM OF AGREEMENT

The Department of Environmental Quality (“Department”), on behalf of the State Water Control Board (“Board”), and the State Corporation Commission (“Commission”) enter into this memorandum of agreement (“Agreement”), pursuant to § 62.1-44.15:5 D 2 of the Code of Virginia (“Code”), regarding consultation on wetland impacts (“Wetland Impacts Consultation”).

1. Section 62.1-44.15:5 D 2 of the Code requires the Board and the Commission to “develop a memorandum of agreement pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 and 56-580 of the Code to ensure that consultation on wetland impacts occurs prior to siting determinations” by the Commission for “[f]acilities and activities of utilities and public service companies.”
2. When the Commission receives an application for certification of facilities under §§ 56-46.1, 56-265.2, 56-265.2:1 or 56-580 of the Code, the Department will consult with appropriate governmental agencies, prepare a Wetland Impacts Consultation including a summary of findings and any recommendations for the Commission’s consideration that resulted from the Department’s consultation, and provide the Wetland Impacts Consultation to the Commission pursuant to this Agreement.
3. The Commission’s Staff will notify the Department in writing within five (5) business days of receiving an application for certification of facilities pursuant to §§ 56-46.1, 56-265.2, 56-265.2:1 or 56-580 of the Code. No later than ten (10) business days after receipt of the wetland impact analysis information contained in the application, the Department will advise the Commission’s Staff and the applicant in writing as to:
 - A. the completeness of the information received necessary to conclude the Wetland Impacts Consultation (the Appendix to this Agreement provides guidance on the information the Department has determined it may need in order to conclude the Wetlands Impacts Consultation); and
 - B. the estimated length of time required to conclude the Wetland Impacts Consultation.

If the Department determines the wetland impacts analysis information contained in an application is incomplete, within ten (10) business days of notifying the applicant the Department will notify the Commission’s Staff in writing and include a listing of the information needed to initiate the Wetland Impacts Consultation. The Department and the Commission’s Staff may confer from time to time on these matters.

4. In accordance with the above:
 - A. No later than sixty (60) days after receipt of the complete wetland impacts analysis information contained in the application, the Department will submit to the Commission's Staff in writing:
 - (i) a notification that the Wetland Impacts Consultation has been completed; or
 - (ii) a notification that the Wetland Impacts Consultation has been suspended due to matters discovered during the review. The notification will include a description of the information needed to resume the review.
 - B. Enclosed in the written notification described in 4.A.(i), above, for all completed Wetland Impacts Consultations the Department will submit a written report to the Commission which includes:
 - (i) the Wetland Impacts Consultation, a summary of findings, and any recommendations for the Commission's consideration which resulted from the review; and
 - (ii) a list of any Virginia Water Protection permits and approvals required for the proposed facility, in accordance with § 62.1-44.15:5 of the Code, which were identified during the Wetland Impacts Consultation.
5. Consistent with § 62.1-44.15:5 of the Code, the Department and the Board may request assistance from agencies of the Commonwealth, including the Department of Game and Inland Fisheries, the Department of Conservation and Recreation, the Virginia Marine Resources Commission, the Department of Health, the Department of Historic Resources, and any other interested and affected parties, as well as federal agencies including the Norfolk District Corps of Engineers and the U.S. Fish and Wildlife Service, as needed to complete the Wetland Impacts Consultation.
6. If requested by the Commission's Staff, one or more members of the Department's Staff will appear as a witness at the Commission's evidentiary hearing to testify regarding the activities of the Department with respect to the Wetland Impacts Consultation.
7. If requested by the Commission's Staff, the Department will endeavor to provide, or seek to coordinate from other governmental entities, expert assistance to the Commission's Staff on issues regarding the Wetland Impacts Consultation.

Robert G. Burnley, Director
Department of Environmental Quality

Date

Hullihen Williams Moore, Chairman
State Corporation Commission

Date

Clinton Miller, Commissioner
State Corporation Commission

Date

Theodore V. Morrison, Jr., Commissioner
State Corporation Commission

Date

APPENDIX
GUIDANCE DOCUMENT

The following provides guidance on the information that will need to be submitted to the Department of Environmental Quality (“DEQ”) in order for the DEQ to conclude the Wetland Impacts Consultation.

For all alternatives:

A desktop survey of actual and potential impacts to wetlands and streams must be conducted for all proposed routes and facility locations. Reference materials to be consulted include aerial photographs (infrared if available), U.S.G.S. topographic maps, USFWS National Wetland Inventory Maps, NRCS Soil Surveys, and any other pertinent available information. For each alternative, the type and extent of wetland and stream impacts, both permanent and temporary, should be summarized in the text of the report, and shown on maps. Based on the information provided, the applicant may be asked to field verify certain areas for one or more alternatives. A summary of why the proponent selected the preferred alternative and why the other alternatives were dismissed should be included.

For the preferred alternative only:

A field delineation of wetlands and streams along the preferred route and/or facility site must be conducted by wetland professionals. A delineation map and field sheets for each wetland or stream impact area and classified according to the Cowardin classification system must be submitted as part of the report. The acreage (and linear feet of stream) of temporary and permanent impacts must be calculated for each impact area. Documentation from the Department of Game and Inland Fisheries and

the Department of Conservation and Recreation Natural Heritage Program concerning potential impacts to federal or state listed threatened or endangered species must be submitted, to include any recommendations for surveys that should be conducted. Documentation from the Department of Historic Resources concerning any historic properties that could be impacted must be submitted, to include any recommendations for surveys that should be conducted. Documentation from either the affected locality(ies) or directly from the Chesapeake Bay Local Assistance Department regarding any potential impacts to Chesapeake Bay Resource Protection Areas or Resource Management Areas, must be submitted if applicable. Based on the information provided, DEQ may request that the Norfolk District Corps of Engineers field confirm one or more delineated areas.

For long corridors that extend over large wetland areas, rather than being confined to distinct wetland crossings, a combination of desktop information with selective ground truthing may be substituted for a full field delineation of the preferred alternative.

DEQ, in consultation with other federal and state resource agencies as appropriate, will provide recommendations to the proponent as to any additional avoidance and minimization measures that should be explored and their preliminary comments on the proponent's preferred alternative.